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In re application of

Bitler et al.

Serial No. 09/398,377

Filed: September 17, 1999

For: POLYMERIC THICKENERS FOR OIL-CONTAINING COMPOSITIONS

DECISION ON  
PETITION

This is a decision on the PETITION UNDER 37 CFR 1.181 TO DIRECT THE EXAMINER AS TO THE CORRECT CONSTRUCTION OF CERTAIN CLAIMS.

On March 31, 2003, a non-final office action was mailed to Applicants. The office action contained numerous rejections and objections to the specification based on new matter and claim interpretation. Petitioner argues that the instant specification provides support for all of the subject matter presented by Applicants and that the examiner is interpreting the instant claims too narrowly.

On June 23, 2003 the instant petition under 37 CFR 1.181 was filed to formally request that the examiner be directed to construct the instant claims in a correct manner.

### DECISION

It is noted that the instant petition was submitted by Petitioner on June 23, 2003 which falls more than two months after the date of the office action thereby making the instant petition untimely under Rule 181.

In addition, it would appear on its face that there is no issue that is ripe for a petition at this time. It is noted that the outstanding office action is a non-final office action and therefore, the rejections and objections are not yet final. Petitioner states that "The examiner is currently examining these claims on the basis of a construction of the claims which Applicant believes to be wrong. The claims in question have been rejected, and it seems likely that their patentability will be the subject of an appeal. Applicant believes that it is important that further examination, and any appeal, should be based on an agreed construction of the claims." While this would be desirable, this does not appear to be a petitionable matter. It would seem that the issue of claim interpretation and the subsequent rejections/objections presented that are based upon this interpretation, should best be handled by the Board of Patent Appeals and Interferences.

Accordingly, because the instant petition is untimely and because there does not appear to be a petitionable issue present, the instant petition is **DISMISSED**.

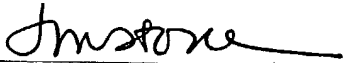
The examiner however, should take note of Section MPEP Section 706.07 of the MPEP which states:

Before final rejection is in order a clear issue should be developed between the examiner and applicant.

Before making the next office action final, the examiner should clearly point out how he is interpreting the claims and provide clear reasoning as to why he is interpreting the claims in that manner. Applicant's arguments regarding this matter should be thoroughly addressed.

Upon receipt of a final office action, if Petitioner feels that a clear issue for appeal has not been developed, then a petition to withdraw the finality can be filed.

It is also pointed out that applicant's time for response continues to run from March 31, 2003. Extensions of time may be obtained to file any amendments.



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